

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROY SMITH CO. and ROY SMITH INVESTMENT  
CO.

UNPUBLISHED  
October 11, 1996

Plaintiffs-Appellants,

and

CARAMAGNO FOODS CO.,

Plaintiff,

v

No. 176318  
LC No. 92-229133 CE

CITY OF DETROIT and AARO WASTE PAPER  
COMPANY,

Defendants-Appellees.

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Before: Reilly P.J., and Michael Kelly, and C.L. Bosman,\* JJ.

PER CURIAM.

Plaintiffs Roy Smith Company and Roy Smith Investment Company (hereinafter referred to collectively as “Smith”) appeal by leave granted a circuit court order affirming the decision of the Board of Zoning Appeals. We reverse the circuit court order and remand to the board for further proceedings.

This case involves the proposal of the Aaro Waste Paper Company (Aaro) to construct and operate a solid waste transfer and recycling facility on its property at 14333 Goddard Street in Detroit. The property is zoned M-4, “intensive industrial district.” Pursuant to Detroit Zoning Ordinance, § 104.0100, many “usually objectionable” uses, including sewage disposal plants, are permitted as a matter of right in an M-4 district. The use desired by Aaro is permitted as of right in an M-5 district, § 105.0302, and therefore, may be permitted with approval in the M-4 district. § 104.0300. Section 65.0000 *et seq.* of the zoning ordinance governs “permitted with approval uses.”

\* Circuit judge, sitting on the Court of Appeals by assignment.

In accordance with the procedure in § 65.0000, Aaro filed an application with the Detroit Building and Safety Engineering Department (“BSE”). BSE denied the request, concluding that, in the department’s opinion, the proposal “could not be accomplished without adversely affecting the surrounding land use . . . .” Aaro appealed the decision to the Board of Zoning Appeals (BZA), which ultimately reversed the BSE denial. Petitioners appealed the BZA decision to the Wayne County Circuit Court, pursuant to MCL 125.585; MSA 5.2935. The circuit court affirmed. Smith filed an application for leave to appeal, which this Court granted.

On appeal, Roy Smith argues that the findings in BZA decision do not satisfy the requirements of § 65.0400, which states:

- (A) No permitted with approval use shall be approved by the buildings and safety engineering department or the board of zoning appeals on appeal unless all of the following findings are made.
- (B) That the establishment, maintenance, location and operation of the proposed permitted with approval use will not be detrimental to or endanger the social, physical or economic well being of the surrounding neighborhoods, nor aggravate any pre-existing physical, social or economic deterioration of surrounding neighborhoods [; and]
- (C) That the permitted with approval use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted, nor substantially diminish or impair property values within the neighborhood; and
- (D) That the establishment of the permitted with approval use will not impede the normal and orderly development and improvement of surrounding property for use permitted in that district; and
- (E) That adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided; and
- (F) That adequate measures have been or will be taken to provide ingress and egress designed so as to minimize traffic congestion in the public streets; and
- (G) That the permitted with approval use will in other respects conform to the applicable regulations of the district in which it is located.

The BZA’s findings were as follows:

- (1) The Board found that the proposed Recycling Transfer Facility would be compatible with the adjacent business strip and the surrounding industrial area because all activities associated with the processing of industrial waste would be conducted within the confines of the building.

- (2) The Board further found that the proposed recycling/transfer facility would not interfere with vehicular and pedestrian traffic because the site is of adequate size to contain all staging, tipping, loading, storage and parking requirements of the use.
- (3) The Board further found that the proposed facility would not be detrimental to, nor would the activities impede the use and enjoyment of the properties in the immediate area because the operation is required to meet all applicable health, safety, air pollution and traffic flow regulations to obtain the required permits and licenses to operate the facility.
- (4) The Board further found that the proposed recycling/transfer facility would not endanger the health and safety of the surrounding area because hazardous waste or demolition debris would not be processed at the site.
- (5) The Board further found that the proposed facility would provide a needed and environmentally sound service to the metropolitan area; and furthermore, the use could provide needed employment opportunities in an area hit by physical and economic deterioration.
- (6) The Board further found that to permit a recycling/transfer facility with certain conditions to protect the surrounding area would not be contrary to the spirit and intent of the Zoning Ordinance.

We agree with Smith that the BZA's findings did not fulfill the requirements of § 65.0400.

Aaro argues that the BZA is not required to “parrot” the language from the ordinance and has attached as an appendix to its brief an analysis that purports to demonstrate that the findings made by the BZA satisfied the requirements of § 65.0400.

Despite the fact that the BZA's findings suggest its consideration of issues required to be addressed by the ordinance, we conclude that the findings do not comply with the ordinance. We agree with Aaro that the BZA's findings indicate its consideration of many of the issues on which the ordinance requires findings. However, the ordinance requires more than the board's consideration of the issues. The ordinance prohibits the BZA from approving the use unless all of the specified findings are made. Each finding is critical. For example, the BZA's findings do not address whether the facility will “substantially diminish or impair property values” as required by § 65.0400(C). Although the BZA found that the facility “could provide needed employment opportunities” and “would not impede the use and enjoyment of properties in the immediate area”, unless the evidence shows that the facility will not substantially diminish or impair property values, and the BZA makes that finding, the BZA is precluded from approving the use.

We do not mean to suggest by our holding that the BZA should issue new findings that simply “parrot” the ordinance. Findings are inadequate if they merely repeat the language of the ordinance. See *Badanek v Schroskey*, 21 Mich App 582; 175 NW2d 784 (1970). On the other hand, judicial

review of the decision of the BZA should not require the court to supply the mandated findings by inference from the BZA's decision, as Aaro has invited us to do in this case.

Under MCL 125.585(11); MSA 5.2935(11), the circuit court was charged with insuring that the decision of the BZA is in accordance with law, is based upon proper procedure, is supported by competent, material, and substantial evidence on the record, and represents a reasonable exercise of discretion. *MacDonald Advertising Co v McIntyre*, 211 Mich App 406, 409-410; 536 NW2d 249 (1995). The circuit court erred in determining that the BZA's decision complied with the zoning ordinance. Accordingly, the circuit court's order affirming the BZA's decision is vacated and the case is remanded to the BZA for further findings as required by § 65.0400. If the BZA deems it appropriate, it may allow the parties to supplement the record. Only the record made before the BZA may be considered by the circuit court in the event of an appeal.<sup>1</sup> *Lorland Civic Ass'n v DiMatteo*, 10 Mich App 129, 137-138; 157 NW2d 1 (1968).

Because we have concluded that the BZA did not make the findings required by the ordinance, we need not address Smith's remaining issues.

Reversed and remanded to the BZA. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Calvin L. Bosman

<sup>1</sup> As indicated by the parties, the circuit court's opinion refers to evidence that was not part of the record before the BZA.